**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 249 of 1998**

**For Approval and Signature :**

# HONOURABLE MR.JUSTICE C.K.BUCH

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | |
| 5 | Whether it is to be circulated to the civil judge ? | |

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**JAYESHBHAI CHANDUBHAI PATEL - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**
MR YOGESH S LAKHANI with MR RAKSHIT DHOLAKIA for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Opponent(s) : 1,

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## CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

**Date : 17/04/2007**

**ORAL JUDGMENT**

1. Heard Shri Rakshit Dholakia, learned counsel appearing on behalf of Shri Yogesh S. Lakhani for the appellant and Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State.

2. The present appeal has been preferred by the appellant-orig. convict of Atrocity Case No.16 of 1997 decided by the learned Special Judge, Baroda. The appellant has challenged the legal and validity of the judgment and order of conviction and sentence dated 12th March, 1998, passed by the learned Special Judge, Vadodara, in Atrocity Case No.16 of 1997, whereby the learned trial Judge has held the appellant guilty of the offence punishable under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') and imposed rigorous imprisonment for six months and a fine of Rs.500/-, in default to undergo rigorous imprisonment for two months. However, the learned trial Judge has acquitted the appellant from the charge of offence punishable under Sections 504 and 506(2) of the Indian Penal Code. This very order of conviction and sentence has been assailed by the appellant on various grounds as mentioned

in paragraph no.2 of the memo of the appeal.

3. To appreciate the rival contentions, it would be appropriate for this Court to deal with the prosecution case in brief. It is the case of the prosecution that on 30th December, 1996, the general body meeting of group village panchayat was convened. The complainant was the Member elected from his village and there was some dispute at the time of commencement of the meeting as the appellant had objected by raising an issue about circulation of agenda of the meeting. The complainant was insisting for commencement of the proceedings and at that time, the appellant committed offences for which he has been chargesheeted. The Police Sub-Inspector recorded the complaint and after investigation ultimately chargesheeted the appellant for the offences punishable under Sections 504 and 506(2) of the Indian Penal Code and also under Section 3(1)(10) of the Act. After completion of the trial, the learned trial Judge has been pleased to hold the appellant guilty of the

offence as aforesaid.

4. Shri Dholakia, learned counsel appearing for the appellant, has taken me through the grounds of challenge, evidence led by the prosecution as well as judgment and order of conviction and sentence under challenge. According to Shri Dholakia, the judgment and order of conviction and sentence is bad on more than one count. If his oral submissions are kept in nutshell, they are :

(i) The learned trial Judge has erred in accepting the bare words of the complainant though the same have not been corroborated by satisfactory adequate evidence.

(ii) The learned trial Judge ought to have observed that the complainant himself has named the Sarpanch and Talati/ Village Secretary as his main witnesses in the complaint given. However, their

evidence was not available before the Court as none of these two have been examined. The learned trial Judge has erred in accepting the evidence of one PW-Ganpat, Member of very village panchayat and a person belonging to the village of the complainant. The general body meeting popularly known as “Gram Sabha” was called and it is clear from the evidence that the panchayat is a group panchayat and consisting of three different villages. So the evidence of PW-Ganpat ought to have been considered as evidence of a person interested in the result of the case as the complainant was also a member elected from that very village of PW-Ganpat.

(iii) Approximately 50 persons were present at the time of incident in question. Some independent witness could have been examined to seek corroboration. When the appellant has been acquitted from

the charge of offence punishable under Sections 504 and 506(2) of the Indian Penal Code, the Court also should have observed that failure on the part of the prosecution to bring home the charge for two major offences punishable under the provisions of the Indian Penal Code takes the case of the prosecution under a great shadow of doubt so far as the allegations made for commission of offence punishable under Section 3(1)(10) of the Act is concerned.

(iv) There is no convincing evidence to show that the complainant belongs to Schedule Caste. Of course, he has said that he belongs to Vankar community in the FIR, but in the examination-in-chief he has not stated categorically that he belongs to a particular community which is scheduled caste and the provisions of Section 3(1)(10) of the Act, therefore, would be attracted.

(v) In the present case, the investigation was carried out by a Police Sub-Inspector and the Police Sub-Inspector had filed chargesheet. Now as per the settled legal position, Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as 'the Rules'), the Investigating Officer authorised under Rule 7(1) of the Rules shall investigate such a crime. The Police Sub-Inspector was not authorised to investigate the crime and to file the report under Section 173 of the Code of Criminal Procedure, 1973. It is not the case of the prosecution that the services of the said Police Sub-Inspector were requisited by the Dy.S.P. and the investigation was ultimately controlled by Dy.S.P. and the appellant has been chargesheeted by the Dy.S.P. and not by the officer below the rank as

mentioned in Rule 7(1) of the Rules. For the sake of brevity and convenience, the Court would like to reproduce the relevant part of the said Rule 7 of the Rules, which is as under :

> ***"7.*** *Investigating Officer :*
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> ***(1)*** *An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."*

(vi) The language of the said Rule 7(1) of the Rules itself is very clear. It is mandatory in nature and the same has been held mandatory by more than one decision. It is not necessary for this Court to refer to those decisions. In such or similar cases, the accused can legitimately argue that the entrustment of investigation to the office not authorised for investigation has resulted into serious prejudice to the accused. It is present case it is also possible to argue that the officer of the rank of Dy.S.P. probably would have insisted for examination of Sarpanch or Talati during the trial and instructed the learned Public Prosecutor in the matter satisfactorily because both of them have been named in the complaint. It is true that the learned Public Prosecutor is entitled to examine any witness. The only care which is required to be taken is that the trial should be

conducted in a fair manner. The chronology of the witness is also a matter of discussion with the learned Public Prosecutor. But when a question of dropping of an important witness comes, then the learned Public Prosecutor should act most objectively.

5. When the Court finds that the appeal is required to be allowed on any one ground out of various grounds placed, it is not necessary for this Court to enter into a detailed discussion of each ground. As this Court finds enough strength in the arguments advanced by Shri Dholakia, learned counsel appearing for the appellant, which are mainly based on violation of Rule 7(1) of the Rules referred to hereinabove, the appeal is required to be allowed observing that the investigation by a Police Sub-Inspector and the act of filing chargesheet by him has perhaps resulted into serious prejudice to the appellant and it would not be safe for the Court to link the

appellant with the crime on the strength of the defective or unauthorised investigation.

6. In view of above observations and discussion, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 12th March, 1997, passed by the learned Special Judge, Vadodara, is hereby quashed and set aside. The appellant is hereby ordered to be acquitted from all the charges levelled against him in respect of the offence in question. The bail bond executed by the appellant stands discharged. The amount of fine, if any, shall be refunded to the appellant on proper identification.

**(C.K. Buch, J)**

Aakar